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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff,	Criminal Case No. 08CR1794-JM
v.	DATE: September 12, 2008 TIME: 1:30 p.m. Before Honorable Jeffery T. Miller
SERGIO GUZMAN-SOSA (D1), KATRINA CUELLAR (D2), Defendant(s).	UNITED STATES' RESPONSE TO DEFENDANT'S MOTIONS TO: (1) DISMISS INDICTMENT DUE TO VIOLATION OF RULE 5 (2) ORDER TRANSLATION; (3) ORDER PAYMENT FOR TRANSCRIPT OF VIDEO DEPOSITION TOGETHER WITH STATEMENT OF FACTS AND MEMORANDUM OF POINTS AND AUTHORITIES

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COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and W. Mark Conover, Assistant U.S. Attorney, and hereby files its Response to Defendant's Motions in the above-referenced case. Said Response is based upon the files and records of this case together with the attached statement of facts and memorandum of points and authorities.

DATED: September 9, 2008.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/ W. Mark Conover
W. MARK CONOVER
Assistant United States Attorney

KAREN P. HEWITT
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United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. SERGIO GUZMAN-SOSA (D1), KATRINA CUELLAR (D2), Defendant(s).	Criminal Case No. 08CR1794-JM DATE: September 12, 2008 TIME: 1:30 p.m. Before Honorable Jeffery T. Miller UNITED STATES' STATEMENT OF FACTS AND MEMORANDUM OF POINTS AND AUTHORITIES

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I

STATEMENT OF FACTS

The United States incorporates by reference the statement of facts previously provided to the Court.

III

MEMORANDUM OF POINTS AND AUTHORITIES

A. DISMISS INDICTMENT DUE TO VIOLATION OF RULE 5

Defendants were indicted on the tenth court day following their initial appearance in compliance with Federal Rule of Criminal Procedure Rule 5.1. Federal Rule of Criminal Procedure Rule 45 (a)(3) states the following regarding computing and extending Time:

> Rule 45. Computing and Extending Time
> (a) Computing Time.
> The following rules apply in computing any period of time specified in these rules, any local rule, or any court order:
> (1) Day of the Event Excluded.
> Exclude the day of the act, event, or default that begins the period.
> (2) Exclusion from Brief Periods.
> Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days.
> (3) Last Day.
> Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or day on which weather or other conditions make the clerk's office inaccessible. When the last day is excluded, the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day when the clerk's office is inaccessible.
> (4) "Legal Holiday" Defined.
> As used in this rule, "legal holiday" means:
> (A) the day set aside by statute for observing:
> .....
> (iv) Memorial Day;
> ....

Fed. R. Crim. P. 5.1 (a)(1-4)

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Monday, May 26, 2008, was Memorial Day. Monday would be properly excluded from Federal Rule of Criminal Procedure Rule 5.1 ten day time requirement. Therefore Defendants motion to dismiss the indictment for violation of Rule 5.1 is unfounded.

B. ORDER TRANSLATION

The United States will provide Defendant with certified translations of all statements it intends to use during trial.

C. ORDER PAYMENT FOR TRANSCRIPT OF VIDEO DEPOSITION

Federal Rule of Criminal Procedure Rule 15(d) states the following:

> If the deposition was requested by the government, the court may -- or if the defendant is unable to bear the deposition expenses, the court must -- order the government to pay:
>
> (1) any reasonable travel and subsistence expenses of the defendant and the defendant's attorney to attend the deposition; and
>
> (2) the costs of the deposition transcript.

Fed. R. Crim. P. 15(d) (emphasis added)

The United States did not request the material witness deposition. Therefore, the United States is under no obligation to pay the costs of the deposition transcript.

IV
CONCLUSION

For the foregoing reasons, the government respectfully requests that Defendant's motions be denied.

DATED: September 9, 2008.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/ W. Mark Conover
W. MARK CONOVER
Assistant United States Attorney

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff v. SERGIO GUZMAN-SOSA (D1), KATRINA CUELLAR (D2), Defendant(s).	Case No. 08CR1794-JM CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, W. MARK CONOVER, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of UNITED STATES' RESPONSE TO DEFENDANT'S MOTIONS on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Erick L. Guzman, Federal Defenders of San Diego, Inc.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 9, 2008.

s/ W. Mark Conover
W. MARK CONOVER